

The Rule of Law and Its Enemies

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ABSTRACT

The paper purports to provide an elementary survey concerning the rule of law and the forms of legal-political organizations faring as its enemies. It contains two parts. The first part contains the outline of a theory of the rule of law built upon an archetypal model and encompassing five varieties arranged on a scale of progressive rule-of-lawness: namely, quasi-minimum, minimum, more-than-minimum, quasi-maximum, and maximum rule of law. The second part articulates the outline of a theory of maximum rule of law's enemies. It proceeds, tentatively, in three steps. First, it singles out four ideal typical varieties of autocratic government: to wit, full legalistic autocracy, prima facie legalistic autocracy, discretionary legalistic autocracy, and full decisionist autocracy. Second, it surveys Bovero's theory of elective autocracies as (close) instances of full legalistic autocracies. Third, and finally, it casts some light on the main features of Big Tech dictatorship.

Il saggio intende offrire una rassegna elementare sullo Stato di diritto e sulle forme di organizzazione giuridico-politica che ne rappresentano i nemici. Il lavoro si articola in due parti. La prima parte presenta il profilo di una teoria dello Stato di diritto costruita su un modello archetipico e comprendente cinque varietà disposte lungo una scala di progressiva rule-of-lawness: quasi-minimo, minimo, più-che-minimo, quasi-massimo e massimo Stato di diritto. La seconda parte sviluppa il profilo di una teoria dei nemici del massimo Stato di diritto. L'analisi procede, in via esplorativa, in tre passaggi. In primo luogo, individua quattro varietà idealtipiche di governo autocratico: autocrazia pienamente legalistica, autocrazia prima facie legalistica, autocrazia legalistica discrezionale e autocrazia pienamente decisionista. In secondo luogo, esamina la teoria di Bovero sulle autocrazie elettive quali (quasi) istanze di autocrazie pienamente legalistiche. In terzo e ultimo luogo, mette in luce le principali caratteristiche della dittatura delle Big Tech.

KEYWORDS

Rule of law, government of laws, government of men, quasi-minimum rule of law, minimum rule of law, more-than-minimum rule of law, quasi-maximum rule of law, maximum rule of law, full legalistic autocracy, prima facie legalistic autocracy, discretionary legalistic autocracy, full decisionist autocracy, elective autocracies, Big Tech dictatorship

Stato di diritto, governo delle leggi, governo degli uomini, Stato di diritto quasi-minimo, Stato di diritto minimo, Stato di diritto più-che-minimo, Stato di diritto quasi-massimo, Stato di diritto massimo, autocrazia legalistica integrale, autocrazia legalistica prima facie, autocrazia legalistica discrezionale, autocrazia decisionistica integrale, autocrazie elettive, dittatura delle Big Tech

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The Rule of Law and Its Enemies

PIERLUIGI CHIASSONI

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«The government of laws never succeeded in totally superseding the government of men, and vice versa»
N. Bobbio¹

1. *Crumbling Hopes*

At the end of his 1918 Munich conference “Politics as a Vocation” (*Politik als Beruf*), after recalling in vivid shades the present situation of crisis and grim future prospects following to the end of the First World War, Max Weber points to the properties that should characterize men and women having “the calling for politics”:

«Politics is a strong and slow boring of hard boards. It takes both passion and perspective. Certainly, all historical experience confirms the truth – that man would not have attained the possible unless time and again he had reached out for the impossible. But to do that a man must be a leader, and not only a leader but a hero as well, in a very sober sense of the word. And even those who are neither leaders nor heroes must arm themselves with that steadfastness of heart which can brave even the crumbling of all hopes. This is necessary right now, or else men will not be able to attain even that which is possible today. Only he has the calling for politics who is sure that he shall not crumble when the world from his point of view is too stupid or too base for what he wants to offer. Only he who, in the face of all this, can say “In spite of all, let’s keep going!” has the calling for politics»².

The age we live exhibits strong analogies to the one Max Weber depicts. At present, the hopes of those who long for universal peace and global rule of law are crumbling. Not only because of widespread adverse political practices, which always existed, but also, what is more troubling, because of the open, wide, bald, meticulously pursued, methodically propagated, vindications of war and unashamed abuses to the rule of law³.

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¹ BOBBIO 1983b, xxiv.

² WEBER 1919, 48 (translation slightly modified).

³ A few well-known examples among many. Encouraged by Western appeasement to the 2014 taking over of Crimea, on February 2022 Russia decided to wage an aggression war (“special military operation”) against Ukraine. The President of the United States of America has recently decided to change the name “Department of Defence” into “Department of War”. The same Government is waging an internal war against irregular migrants using meth-

In the face of this, echoing the title of a well-known book by Karl Popper, this paper will be devoted to the rule of law and its enemies.

It contains two parts, which will be devoted to providing the outline, respectively, of a theory of the rule of law (§ 2-8 below), and of a theory of those legal-political organizations that fare as rule of law's enemies (§ 9-16 below).

Throughout the paper, I will adopt the standpoint of the scholar who, assuming counterfactually a quasi-total ignorance upon the issue, purports to provide people, in particular those whose hopes are crumbling, with tools that may be used for getting perhaps a bit clearer understanding of what the rule of law is, and why it makes sense, here and now, standing for it "in spite of all": demanding its timely implementation, unmasking the deceptive strategies adopted by its adversaries, and denouncing anti-rule of law political programs, movements, and governments as social phenomena that are intimately contrary to the principles of humanitarian ethics (liberty, equality, solidarity).

1. *Outline of a Theory of the Rule of Law*

2. *What Is Rule of Law?*

A theory of the rule of law must elucidate what the rule of law is.

If, aiming at that goal, we begin our inquiry by asking "What is the rule of law?", we start by posing a metaphysical query about the essential properties characterizing the *thing* rule of law: about what makes something to be *rule of law* and not something else.

If, however, as it looks methodologically more advisable, we adopt an analytic approach, that metaphysically formulated question must preliminarily be converted into a conceptual question⁴. This is not anymore about the essential properties of the *thing* rule of law. It is, rather, about the words "rule of law". It asks for their actual meaning: for what is meant, or can be meant, here and now, by the phrase "rule of law" and the several expressions that are usually assumed to fare as its homologous in other languages. Like, for instance, "estado de derecho", "estado do direito", "état de droit", "jogállamiság", "právního státu", "právný štát", "pravnu stat", "pravnu stata", "praworządność", "Rechtsstaat", "stato di diritto", "statului de drept", etc.

A linguistic survey about the uses – ordinary and specialized alike – of rule-of-law expressions highlights their remarkable indeterminacy. By "rule of law" different people, and different thinkers, mean different things; not always, nor for everyone, recommendable⁵. When people invoke

ods proper to a dictatorship. The same Government is also applying "sanctions" against judges and prosecutors of the International Criminal Court, the organizations cooperating to its inquiries on the conduct of the government of Israel in Palestine, UN officials responsible of "unpleasant" reports on the Gaza situation, foreign judges responsible for the "unpleasant" trial of a President's friend. Dealing with presumed drug-traffickers operating in a South American country, instead of arresting the suspects and eventually bringing them in front of courts to make their criminal responsibility to be duly assessed, the same Government has ordered to kill them by military force (on this mischievous practice, see, e.g., COLE 2025, 45-46). The Government of Israel acted and still is acting towards the population of the Gaza Strip in ways that independent legal experts consider amounting to crimes of war, crimes against humanity, and crimes of genocide. The Italian Government did not comply with an order of arrest issued by the prosecutor office of the International Criminal Court, favouring the safe return home of a Libyan high-rank official charged with gross violations of human rights. The Hungarian Government withdraw from the Rome Treaty on the International Criminal Court.

⁴ As it is well-known, the conversion of metaphysical problems into conceptual ones does not exhaust the inquiry. It is a preliminary step, needed to put it on the solid ground of linguistic experience and avoid it going astray. Furthermore, as John L. Austin emphasizes, a sharpened awareness about words goes along with a sharpened understanding of the phenomena to which the words refer. I purport to offer a primer to analytic method in CHIASSONI 2021, 7-49.

⁵ See, for example, GROSSI 2020.

or attack “the rule of law”, it is not clear what exactly they are praising or attacking, which deity from the Olympus of legal and political philosophy they are urging us to worship or throw into the dust⁶.

What, then, is or can be meant, here and now, by “rule of law”?

A first trivial remark towards clarification emphasizes that the word “rule”, as it appears in the expression “rule of law” at stake, does *not* mean *prescription, norm, instruction, principle, or standard of conduct*, as it does when occurs in phrases like “rule of thumb”, “moral rule”, “legal rule”, “rule of the game”, etc. Rather, the word “rule” means here *control, dominion, government*, as it does when used in expressions like “British rule”, “Home rule”, “dictatorial rule”, etc. The trivial remark suggests, therefore, that the phrase “rule of law” is tantamount, roughly, to “dominion of law”, “government of law”, “lordship of law”, “primacy of law”, “preeminence of law”, or even “government of laws”, and refers to legal-political organizations where what regulates human affairs is “(the) law” or “the laws”, and not “(the) men”⁷.

What does it mean, however, to be “ruled by law”, being under the “government of law(s)”, and *not* under “the government of men”?

At a first glance, the idea of a government of law(s) can be understood in three different but related ways.

First, a government of law(s) is a form of legal-political organization where political power (the power of making decisions binding for a whole collectivity) is *under the law (sub lege)*; where the law is, or ought to be, the king (*nómos basiléus*).

Second, a government of law(s) is a form of legal-political organization where political power is *exercised by means of laws (per leges)*;

Third, a government of law(s) is a form of legal-political organization where political power is *both under the law (sub lege) and exercised by means of laws (per leges)*⁸.

What does it mean, however, for a government to be “under” or “subject to” “the law”? What does it mean for political power to be exercised “by means of laws”?

To provide an answer, I will proceed in two steps. I will begin by introducing an archetypal model of laws-based dominion over human affairs, and, by way of a reconstruction grounded on it, I will distinguish, and briefly consider in turn, five different forms of rule of law, namely:

1. the quasi-minimum rule of law;
2. the minimum rule of law;
3. the more-than-minimum rule of law;
4. the quasi-maximum rule of law;
5. the maximum rule of law.

The five varieties are meant to compose a very tentative theory of the rule of law. Together, they aim to further the conceptual mastery of the elusive linguistic and institutional phenomenon “rule of law” by enabling any interested person to single out different forms arranged on a scale where each element represents a different degree of rule-of-lawness. In the scale, as we shall see, the quasi- or less-than-minimum rule of law corresponds to the first and lowest level, representing

⁶ This point is emphasized, e.g., by BOBBIO 1983b, xii-xiii; TROPER 1992, 267-269; COSTA, ZOLO 2002b, 5-6; ZOLO 2002, 19; BINGHAM 2010, 5: «As the debate broadened, differing concepts of the rule of law were put forward until a time came when respected commentators [including J. Raz, J. Finnis, J. Shklar, T. Carothers, J. Waldron, and B. Tamanaha] were doubtful whether the expression was meaningful at all»; DWORKIN 2012, 5. On the rule of law, see also, e.g.: CELANO 2022; DE ASÍS ROIG 1999, 221-232; European Commission for Democracy through Law (Venice Commission) 2011; KRISTAN 2017, 11-45; MORESO 2020, 155-173; RAZ 1977, 214-219; RAZ 1990, 331-339; TAMANAHA 2007; WALDRON 2016.

⁷ See, e.g., BOBBIO 1983a, 169-195; ZOLO 2002, 17-88.

⁸ See, e.g., BOBBIO 1983a, 175-176; SCALIA 1989, 1176; BINGHAM 2010, 8; CELANO 2022, 140.

the weakest variety; contrariwise, the maximum rule of law corresponds to the fifth and highest level, representing the strongest one. The different degrees of rule-of-lawness depend on considerations of instrumental rationality. They correspond to the respective adequacy of the five forms of rule of law to a goal that I will assume to be evident and paramount. The goal can be defined, tentatively, as follows: *realizing what is necessary to ensure the effective legal guarantee of the equal social dignity of each and every human being*⁹.

A methodological remark seems in order, before proceeding. The five varieties may be considered as mirroring, at least in part, the historical and evolutionary pattern of rule of law institutions. Their philosophical background, however, is not legal evolutionism, but, rather, the Hobbesian arithmetic of social states of affairs based on the rational calculus (by addition, subtraction, substitution) of institutional properties¹⁰. As such, the theory aims at conveying a simple suggestion. From an explanatory viewpoint, it makes no sense, and would be an utter waste of time, debating about which of these different forms corresponds to the “true” or “genuine” ideal of the rule of law, to the “essence” of the rule of law, to the rule of law “properly so called”. What matters is, rather, being aware that no fewer than five varieties can be conceived. And that each one of them corresponds to a different level of legal protection afforded to human persons.

3. The Archetypal Model

The archetypal model represents the founding block of the present theoretical outline. It originates out of Lon Fuller’s 1964 book *The Morality of Law*¹¹.

Arguing for a teleological concept of law inside of a «procedural natural law» perspective¹², Fuller proposes to conceive the law as the social «institution» whose «purpose» consists in «subjecting human conduct to the guidance and control of general rules»¹³.

He claims that «subjection to legal rules» can be realized – never completely, but always up to a certain degree, that can be satisfactorily high –, if, and only if, the social regulation of human conducts abides by eight standards he calls «the principles of legality». These are the principles of generality, promulgation, no-retroactivity, clarity, consistency, compliability, temporal constancy, and applicative congruence¹⁴. According to them, human behaviors are subject to «legal rules», if, and only if, they are subject to norms («rules») that are:

1. *general in scope*, concerning *classes* of subjects and *classes* of behaviours, existing individual norms being the result of the application of general norms to individual cases (principle of generality);
2. *made public* and *knowable* to their addressees by adequate means (principle of promulgation);
3. *not ex post facto*, to wit, not about behaviors that occurred previously to their enactment and publication (principle of no-retroactivity);
4. phrased in such a way as to be *understandable* by their addressees or, at least, the legal counsels thereof (principle of clarity);

⁹ Something more on the way of precisifying this value I will say at the end of § 8 below.

¹⁰ An evolutionary and synthetic approach is adopted in ZOLO 2002, which aims to provide an account of the rule of law-*stato di diritto* as the end-product «of a centuries-old process» internal to the «structures of the modern state» (34).

¹¹ FULLER 1964, 33-94, 96-106, 152-186.

¹² FULLER 1964, 96-97.

¹³ FULLER 1964, 146, see also 4, 53, 96.

¹⁴ FULLER 1964, 38-44, 46-91.

5. *not mutually repugnant* or incompatible (principle of consistency or no-contradiction);
6. *enjoining compliant behaviors*, namely, conducts that it is within the human capability of their addressees to perform (principle of compliance or not requiring the impossible);
7. *stable over time* (principle of temporal constancy);
8. *applied* to individual cases *in ways that are congruent* to their formulation, i.e., that enforce the purposive meaning of the «declared rules» as it can be ascertained and predicted by considering known interpretive principles (principle of applicative congruence)¹⁵.

Contrariwise, by the same eight principles of legality, a social organization *fails* to subject human conducts to the guidance and control of rules, if human behaviors are subject to:

1. *individual ad hoc rules*, not the result of the application of pre-existing general rules to individual cases (purely individual rules);
2. *secret general rules*, unknowable to their addressees before the very moment they are applied to their behaviours (secrecy);
3. *ex post facto general rules*, enacted and promulgated after the occurrence of the behaviors they pretend to regulate (retroactivity);
4. *obscurely formulated general rules*, which can be understood neither by their addressees, nor by their legal counsels (obscurity);
5. *mutually repugnant general rules*, providing their addressees with inconsistent behavioral instructions (inconsistency);
6. *general rules prescribing not compliant behaviors*, which are beyond their addressees' human possibility of compliance (impossible behaviors);
7. *general rules changing very frequently over time* (temporal instability);
8. *general rules applied* to individual cases in ways that *unpredictably depart from their formulation* (incongruent application).

It must be noticed that, in Fuller's view, the principles of legality are as many benchmarks of *lawness*. They work as criteria for «creating law», for «making law possible», and, accordingly, for judging whether, and up to which point, a social organization has, or has not, *law*; is, or is not, a *legal organization*¹⁶.

¹⁵ FULLER 1964, 46-91.

¹⁶ FULLER 1964, 39: «A total failure in any one of these eight directions does not simply result in a bad system of law; it results in something that is not properly called a legal system at all, except perhaps in the Pickwickian sense in which a void contract can still be said to be one kind of contract». Fuller presents the principles of legality (lawness) as composing the «internal» or «inner» «morality of law», since they would make of law an institution that is apt to promote justice and has a substantive moral dimension of its own («an observance of the demands of legal morality can serve the broader aims of human life generally»: 162). The latter would consist in a commitment to a moral «view of man itself»: «To embark on the enterprise of subjecting human conduct to the governance of rules involves of necessity a commitment to the view that man is, or can become, a *responsible agent, capable of understanding and following*

However, as we shall see in a moment, the archetypal model can also be regarded as a very handy model for a variety of those legal orders that are *governments of laws*: namely, the variety corresponding to the idea(l) of a government *by means of* general and abstract rules (*per leges*)¹⁷.

4. Quasi-Minimum Rule of Law

A legal-political organization is a *quasi-minimum* or *less-than-minimum rule of law*, if, and only if, it characterizes for vesting legal authorities with ambivalent normative competences.

On the one side, legal authorities have *prima facie* duties of legality. They ought *prima facie* to enact general, promulgated, not *ex post facto*, clear, consistent, com- pliable, and temporally constant norms; they ought *prima facie* to apply these norms in ways that are congruous with their formulations.

On the other side, however, legal authorities are also vested with *all things considered discretionary powers* whose exercise can fly in the face of their *prima facie* duties of legality. In fact, by using these powers, legal authorities *can* – are allowed to, are permitted to, are authorized to – *override* their *prima facie* duties, acting as follows:

1. they *can* regulate human behaviors by issuing *purely individual norms of conduct*, which do not implement previously established general norms and, in case of conflict, do prevail over them (power of enacting arbitrary individual norms);
2. they *can* enact general norms that their addressees are not able to know until they are applied to their behaviors (power of enacting secret general norms);
3. they *can* enact retroactive general norms at will (power of enacting *ex post facto* general norms);
4. they *can* enact general norms that are ambiguous, vague, semantically indeterminate, and even totally unintelligible (power of enacting obscure norms);
5. they *can* enact general norms that are mutually incompatible, providing people with baffling (contrary or contradictory) instructions without providing clear resolution criteria (power of enacting inconsistent general norms);
6. they *can* enact general norms prescribing impossible behaviours, whose performance lies outside of human capabilities (power of enacting general norms requiring the impossible);
7. they *can* modify existing general norms at will, even at very short intervals of time (power of enacting general norms also very inconstant through time);
8. they *can* apply existing general norms in any way they consider fit, even though it may be totally at odds with their formulation (power of incongruous application of general norms).

A quasi-minimum rule of law, it must be noticed, is apt for being realized in different degrees.

On the one hand, the more the legal authorities abide by their *prima facie* duties of legality, tak-

rules, and answerable for his defaults. Every departure from the principles of the law's inner morality is an affront to man's dignity as a responsible agent» (162, italics added). This claim, as a claim about the substantive moral dimension of the government by laws (*per leges*), is analysed, e.g., in BOBBIO 1983a, 177-178.

¹⁷ See BOBBIO 1983a, 175-176.

ing them to be most of the time *all things considered* duties, the more the legal system comes close in fact, from the standpoint of its law in action, to a minimum rule of law.

On the other hand, and contrariwise, the more the legal authorities depart from their *prima facie* duties of legality, regarding them to be *most of the time* all things considered *overridable*, the more the legal system comes close, from the standpoint of its law in action, to a discretionary legalistic autocracy (see § 12 below).

In any case, the very possibility for legal authorities to override their *prima facie* duties of legality, and exercise discretionary normative powers, makes apparent why this variety of rule of law is *quasi-* or *less-than-minimum*: why it dwells on the lowest level in the scale of rule-of-lawness.

5. *Minimum Rule of Law*

A legal-political organization is a *minimum rule of law*, if, and only if, its norms about the powers and duties of legal authorities meet all the requirements of the archetypal model. In particular, pursuant to Fuller's principles of legality, in a minimum rule of law legal system, legal authorities are subject to the following duties:

1. they *cannot* (are forbidden to) issue *purely individual rules*, i.e., rules that are not the result of the application of pre-existing general rules to individual cases (absolute prohibition of arbitrary purely individual norms);
2. they *ought to* enact rules for *classes* of peoples and *classes* of behaviors, unless stronger compelling reasons obtain for enacting individual abstract rules (conditional relative injunction of eminently general norms)¹⁸;
3. they *cannot* (are forbidden to) enact *secret general rules* (unconditional absolute prohibition of secret general rules);
4. they *cannot* (are forbidden to) enact *ex post facto general rules*, unless stronger compelling reasons obtain (relative prohibition of retroactive general rules);
5. they *cannot* (are forbidden to) enact *obscurely formulated general rules* (absolute prohibition of unintelligible rules);
6. they *cannot* (are forbidden to) enact *mutually repugnant general rules*, unless stronger compelling reasons obtain and suitable resolution criteria are previously made available (relative prohibition of normative inconsistencies);
7. they *cannot* (are forbidden to) enact *general rules prescribing impossible behaviors* (absolute prohibition of unviable norms);
8. they *cannot* (are forbidden to) change *general rules frequently over time*, unless stronger compelling reasons obtain (relative prohibition of temporal inconstancy);
9. they *cannot* (are forbidden to) apply *general rules* to individual cases in ways that *unpredictably and incongruously depart from their formulations*, unless stronger compelling reasons obtain (relative prohibition of incongruent application).

¹⁸ See VON WRIGHT 1963, ch. 1.

On the scale of rule-of-lawness, this form of legal-political organization can be regarded as corresponding to the second level, that of the *minimum* rule of law. On three counts.

First. The nine requirements are formulated in such a way as to be compatible with a legal organization characterized by the absence of an organic distinction (separation, division) between the legislative and judiciary power. They do not rule out the possibility of a legislator-judge: a legal authority acting as a legislator that enacts general and public norms, on the one hand, and then judicially applies them to individual cases, on the other.

Second. The relative prohibition of incongruent application of general norms to individual cases does not, by itself, imply any guarantee of a fair trial, in front of an impartial judge, with the assistance by legal counsel, and the possibility of appeal to a higher court.

Third. The nine requirements are formulated in such a way as to be compatible with the enactment of general, public, no *ex post facto*, clear, consistent, compliable, stable legal norms, which *can have any content whatsoever*. Even the most repugnant one from the standpoint of the equal dignity of every human person. The minimum rule of law, even as here precisified, corresponds therefore, as anticipated, to that variety of the government of law(s) consisting in the government *by laws* (*per leges*). It cuts no ice, though, on the way of a government *under* or *subject to* the law (*sub lege*). In a minimum rule of law, rulers have full power to do whatever they consider convenient, provided they abide by the principles of legality: provided they do it *per leges*. Classes of people can (deontically) be put to death because of trifle behaviors (say, singing in the rain) or personal conditions (being of a certain ethnic group) the rulers deem “unwelcome”, provided this happens respecting the full vigor of legality principles¹⁹.

The introduction of stronger institutional limits on the way of turning a government *by laws* also into a government *under the law* marks the passing to ever less minimum forms of rule of law.

6. More-Than-Minimum Rule of Law

A legal-political organization is a *more-than-minimum rule of law*, if, and only if, it exhibits the following properties.

First. It meets all the requirements of the minimum rule of law. Legal authorities have the duty to abide by the principles of legality, making general, public, non-retroactive, intelligible, consistent, compliable, relatively stable, and congruously applied norms.

Second. It also meets a set of additional requirements that includes:

1. clear-cut organic separation between legislation and jurisdiction;
 2. clear-cut functional separation between legislation and jurisdiction;
 3. a certain, weak, judicial independence;
 4. judicial control upon ordinary administrative acts.
1. *Organic separation between legislation and jurisdiction.* The constitution, it does not matter whether written or unwritten, requires instituting an organ devoted to the exercise of the legislative function (the legislature) and a distinct body of officials devoted to the exercise of the jurisdictional function (the judiciary).
 2. *Functional separation between legislation and jurisdiction.* The legislature is competent to enact general norms, usually in the form of statutes, and is forbidden from deciding individual contro-

¹⁹ To be sure, in its judicial capacity, the government is bound, by the principle of applicative congruence, to apply general norms in ways that be tuned to their formulations. However, in its legislative capacity, the government can make the general norms it likes. *Quod principi placuit, legis habet vigorem*.

versies. Judges are only authorized to issue individual norms, inside of judicial decisions, that ought to be the result of the application of general norms enacted by the legislature.

3. *Weak judicial independence.* Once appointed, judges enjoy of some forms of guarantees from the control of the executive or legislative branch.
4. *Judicial review of administrative acts.* Judges have the power of controlling the legality of administrative acts impinging on peoples' rights or legitimate interests.

It is worth noticing that more-than-minimum rule of law corresponds, roughly, to what Piero Calamandrei, in his 1940 conference *Fede nel diritto* [Faith in the Law], presents as the system of *legislatively formulated law* («diritto a formulazione legislativa») and opposes to the system of *judicially formulated law* («diritto a formulazione giudiziale»)²⁰.

It is worth the while considering which by then existing legal orders Calamandrei presents as instantiating the one or the other system, or something very close to them, respectively.

On the one hand, Nazi Germany and Soviet Russia feature as systems where the law is ultimately formulated by politically appointed, politically faithful, and politically controlled judges, on a case-by-case basis, according to political convenience. Existing general laws are, contrariwise, virtually irrelevant: a façade covering the reign of unlimited judicial-political discretion.

On the other hand, Fascist Italy features as a system where the law is (still) legislatively formulated. Where there (still) exist both a legislature that creates law in the form of general statutes (which may amount to whole codes) and a separate body of (relatively) independent professional judges who apply the general statutes to people assisted by professional (relatively) independent counsels.

It is reasonable to suppose that Calamandrei was consciously providing an idealized picture of the Italian legal system of the time, in an attempt to defend (the remains of) the ideal of legislatively formulated law against the ongoing, powerful, totalitarian trend towards a system of judicially formulated law. It is reasonable to suppose, furthermore, that such a strategic intent of his made him consciously to “overlook” aspects of the Fascist regime that were amenable to the other system.

Nonetheless, Calamandrei's position is very useful to the present purpose. For it shows, based on experience, how inadequate the more-than-minimum rule of law can be from the standpoint of the protection of equal human dignity. Fascist Italy was an autocratic government. A one-party dictatorship like Nazi Germany and Soviet Russia. In fact, it represented the violent, murderous, warmongering, archetype of (in Kelsen's terminology) «middle-class» or «bourgeois» one-party dictatorship²¹. Calamandrei emphasizes that a more-than-minimum rule of law (in his own terms: a system of legislatively formulated law) protects human dignity, in so far as it treats people as planning and responsible agents providing them with legal certainty; in so far as it regulates their conducts by considering classes of behaviors, treating legislatively like cases alike; in so far as it makes the legal professions (jurists, judges, attorneys at law) necessary, and charged with the paramount task of promoting the idea of law as the common property of every component of the community. In so claiming, however, Calamandrei had to pass over in silence, *inter alia*, the utterly degrading and dreadful certainty that the racist 1938 laws “guaranteed” to the Italian Jews as to their legal status and civil capabilities²².

²⁰ CALAMANDREI 1940.

²¹ On one-party dictatorships, see the short but sharp survey in KELSEN 1934, § 50. This section, which is missing in the German original (KELSEN 1925), was added to the Spanish edition, upon Kelsen's request, by the translator and legal philosopher L. Legaz Lacambra. In Norberto Bobbio's words, «Fascism had violence in its body. Violence was its ideology» (BOBBIO 1961, 153); see also BOBBIO 1975, 598-624.

²² The burning side of that adamant legal certainty is masterfully captured in the tales of BASSANI 1971.

7. Quasi-Maximum Rule of Law

A legal-political organization is a *quasi-maximum* or *less-than-maximum rule of law*, if, and only if, it jointly abides by three sets of requirements, namely:

1. minimum rule of law requirements;
 2. more-than-minimum rule of law requirements; and
 3. legislative democratic state requirements.
1. *Minimum rule of law requirements.* First, a quasi-maximum rule of law satisfies all the requirements of the minimum rule of law in a strengthened and improved form. In particular, it is a government *by laws* – general, public, non-retroactive, clear, compliable, consistent, relatively stable, and congruously applied norms – that undertakes the commitment (the “ought”) to treat every human person as a legal subject, endowed in principle with equal legal capability and entitled to equality before the law²³.
 2. *More-than-minimum rule of law requirements.* Secondly, a quasi-maximum rule of law also satisfies the specific requirements of the more-than-minimum rule of law, again in a strengthened and improved form. It characterizes in fact for a commitment to:
 - a. strong judicial independence;
 - b. judicial impartiality;
 - c. principles of natural justice;
 - d. an impartial management of criminal prosecution.
 - a. *Strong judicial independence.* The independence of the judiciary from the executive and legislative branches ought to be ensured in the greatest possible way by “guarantee laws” providing for appointment through politically neutral procedures (e.g., public competitions), career advancement not depending on political fiat, and quasi-immovability from office (e.g., by tenured appointment “during good behavior”).
 - b. *Judicial impartiality.* Justice ought to be administered by a body of impartial judges (*nemo iudex in causa sua*) endowed with adequate legal training.
 - c. *Principles of natural justice.* Judicial proceedings ought to comply with the principles of natural justice or due process. Procedural norms should guarantee the right of every person to easy access to courts for the vindication of her rights or legitimate interests; the right to a competent technical defense; the right to equality before the bench; the right to adversarial proceedings (*audiatur et altera pars*, cross-examination of witnesses, etc.); the right to the legality and adequacy of evidence; the right to an adequate justification of judicial decisions; the right of appeal to higher courts.
 - d. *Impartial criminal law prosecution.* The criminal law sector ought to be characterized by mandatory prosecution and the absence in principle of any discretion whatsoever on the part of law enforcement authorities (public prosecutors, police officers) with regard to the classes of crimes or classes of persons subject to investigation, prevention, or repression²⁴.

²³ See, e.g., ZOLO 2002, 37-38.

²⁴ See, e.g., RAZ 1977, 214-219; ZOLO 2002, 39-40; WALDRON 2016; BINGHAM 2010.

3. *Legislative democratic state requirements.* Thirdly, and finally, a quasi-maximum rule of law also satisfies a set of additional institutional and substantive requirements, meant to promote and make effective, so far as possible, the ideal of government *under the law* (*sub lege*). These requirements encompass:
- a. formal democracy;
 - b. weak constitutionalism; and
 - c. a restricted set of weakly protected constitutional rights.
- a. *Formal democracy.* A quasi-maximum rule of law is a democratic legal order. It characterizes for popular sovereignty (the supreme political power belongs to the people and only to the people); election of parliament through universal, equal, secret, and free suffrage; collective decisions assumed by majority principle; general laws considered as the expressions of the “general will” of the people conveyed by periodically elected and popularly legitimized representatives.
 - b. *Weak constitutionalism.* A quasi-maximum rule of law is a weak constitutional legal order. It characterizes for a constitution that is (conceived by the legal culture as being) *purely flexible* and considers *statutory law* as the *supreme* source of law.
 - c. *A restricted set of weakly protected constitutional rights.* Finally, the constitution of a quasi-maximum rule of law characterizes for ascribing to people (usually, to citizens) a set of *civil* and *political* rights, dating to the dawn of modern constitutionalism (free speech, religious freedom, personal freedom, freedom of association, universal eligibility to political charges, voters’ freedom, minorities’ guarantees, etc.). These rights represent the “prerequisites” of democratic government. Because of the assumed purely flexible character of the constitution, however, the guarantee of constitutional rights is ultimately entrusted to the “general will” of the supreme legislative body itself, which is presumed never to violate them, and, eventually, to case-by-case judicial decisions along the lines of English rule of law as depicted by Albert V. Dicey in his 1885 treatise *Introduction to the Law of the Constitution*²⁵.

The pure flexibility of the constitution, even though combined with democracy, accounts for the *quasi-maximum* character of this variety of rule of law. In fact, nothing in such a constitutional order prevents a powerful and regularly elected political majority from lawfully passing laws that abridge constitutional rights, depart from the principles of legality, and abolish or pervert the very “rules of the game” of the democratic government²⁶.

8. *Maximum Rule of Law*

Finally, a legal-political organization is a *maximum rule of law*, if, and only if, it jointly satisfies two sets of properties.

First. It abides by all the requirements of the minimum and more-than-minimum rule of law, as strengthened and improved in a quasi-maximum rule of law.

²⁵ See DICEY 1885, Part Two; on Dicey’s conception of the rule of law, see, e.g., BOBBIO 1983a, 169-194; SANTORO 2002; BINGHAM 2007; BINGHAM 2010, 3-5; WALDRON 2016.

²⁶ On democracy’s suicide, see, e.g., KELSEN 1932. It must be noticed, in passing, that if one takes seriously the idea of certain constitutional rights as *prerequisites* of democracy, one should conceive the flexible constitution of a democratic state as only *partially* flexible: as containing a *flexible part*, which the legislator can modify at will, alongside to a *petrified part*, which the legislator is absolutely forbidden from modifying.

Second. It also abides by the specific requirements of quasi-maximum rule of law (democracy, constitutionalism, constitutional rights) though in a strengthened and improved form. In this respect, the maximum rule of law characterizes for three distinguishing, mutually intertwined, properties:

1. integral democracy;
2. strong constitutionalism; and
3. an enlarged set of strongly protected constitutional rights.

1. *Integral democracy.* A maximum rule of law is a legal-political organization committed to an integral conception of democracy.

An integral conception of democracy opposes to, and rejects, the *formal* or *procedural* conception as vying for a partial and inchoate form of democracy.

The *formal conception* presents (“true” or “pure”) democracy as consisting essentially in a set of *formal* “rules of the game”, about the *Whom* and *How* of the political life of a society (*how* electing *whom* to political charges; *how* and *by whom* the making of valid collective decisions), the proper working of which requires (“presupposes”) the guarantee of a restricted set of political and civil rights, which nonetheless are ultimately entrusted to the good will of the people’s “general will” as expressed in parliament (see § 7 above).

The *integral conception*, contrariwise, claims formal democracy to be ultimately unfit to the task of guaranteeing effective political equality and every citizen’s equal social dignity. It emphasizes that the democratic “rules of the game” ought to determine not only the *Whom* and *How*, but also the *What* of political life. That they should carefully single out the matters about which extant political majorities *are not free* to decide – the *imperative cage* of elective majority’s power; the *preserve* (*coto vedado*²⁷); the *sphere of the undecidable*²⁸ –, on the one hand, from those matters about which they *are free* to decide (the *permission area* of democratic power, the *sphere of the decidable*), on the other. The imperative cage corresponds, roughly, to the duty of guaranteeing the effective and universal enjoyment of constitutional (“fundamental”) rights. An enlarged catalogue of fundamental rights represents, accordingly, not just a set of (assumedly) disposable “prerequisites” of the democratic game, as it occurs in a quasi-maximum rule of law, but, rather, a fundamental, indispensable, at the same time finalistic and instrumental, element of integral democracy²⁹.

2. *Strong constitutionalism.* A maximum rule of law is a strong constitutional legal order. It regards *constitutional law* as *supreme* and characterizes for a constitution that is (conceived by the legal culture as) *partly rigid* and *partly petrified*.

The constitution is *rigid* (subject to amendment by way of a reinforced procedure), insofar as its provisions concern the permission area of democratic power.

It is *petrified* (not modifiable by the amendment procedure) where its provisions design the imperative cage by establishing fundamental rights and imposing the corresponding full-fledged duties of compliance (in the forms of duties of non-violation and duties of realization) to institutions of primary guarantee (like, e.g., the national legislature), and cope with the latter’s fatal defaults by means of institutions of secondary guarantee (like, e.g., constitutional courts) competent to strike down unconstitutional statutes and censoring unconstitutional gaps³⁰.

²⁷ The term “coto vedado” (*preserve*) comes from Ernesto Garzón Valdés theory of democracy: see, e.g., GARZÓN VALDÉS 1989a, 143-164; GARZÓN VALDÉS 1989b, 209-213.

²⁸ The term “sfera del non decidibile” (*sphere of the not decidable*) comes, as it is well known, from Luigi Ferrajoli’s theory of democracy: see, e.g., FERRAJOLI 2016; FERRAJOLI 2021; FERRAJOLI 2025.

²⁹ See, e.g., BOBBIO 1996, 110-115, at 110: «I could define it [...] “integral democracy”: not only formal, but also substantial, not only instrumental but also finalistic, not only as a method but also as a set of undefeasible inspiring principles»; BOBBIO 1976, 70-75, accounting for his idea of “formal democracy”; FERRAJOLI 2021.

³⁰ See FERRAJOLI 2016.

3. *An enlarged set of strongly protected constitutional rights.* Finally, the constitution of a maximum rule of law characterizes for ascribing to people (to every citizen, every human person, every capable human person) an enlarged set of fundamental rights, going well beyond the *civil* and *political* rights of early constitutionalism. Indeed, fundamental rights out of four distinct categories ought to be ascribed: namely, freedom, social, political, and civil rights. *Freedom rights* encompass, among others, the right to life and the right to (perpetual and universal) peace, as an individual right against governments and supranational organizations alike. *Social rights* include the rights to health, education, adequate food, a minimum income for leading a decent life, a decent dwelling place. *Political rights* concern participation to the working of the democratic system. *Civil rights*, finally, concern property, motherhood and fatherhood, family relations, work relations, and economic entrepreneurship. People should also be entitled to fundamental rights concerning certain *goods*. On the one hand, to the enjoyment of *fundamental* natural, artificial, and strictly personal *goods*. On the other hand, to be free from the presence and obnoxious effects of *lethal goods*³¹.

This enlarged set of fundamental rights designs, as I said, the imperative cage harnessing extant political majorities' power (the preserve, the sphere of the undecidable): political authorities can decide *neither* to violate them, *nor* of abstaining from making them effective. The maximum rule of law purports to provide such a cage with a maximum of protection by enshrining it into a rigid-petrified and judicially guaranteed constitution³².

One final remark "on behalf" of maximum rule of law is in order. The presence of an enlarged set of fundamental rights is a feature made *necessary* by the existence of a *strict synergetic relation* between democracy and fundamental (freedom, social, political, and civil) rights, taking the shape of a *bidirectional instrumental connection*.

On the one hand, there can be no (effective) democracy without an effective guarantee of fundamental rights.

On the other hand, there can be no effective guarantee of fundamental rights without (an effective) democracy, without effectively vesting political power in each and every citizen³³.

In sum, from the standpoint of the integral conception of democracy, democracy and fundamental rights stand, and fall, together.

The bidirectional instrumental connection between democracy and fundamental rights can also be seen as a connection between realizing democracy, on the one side, and realizing the values that give substance to the ideal of protecting the equal social dignity of each and every human being (§ 2 above), on the other. Very roughly speaking, those values are the individualist and hu-

³¹ See FERRAJOLI 2025, containing an updated version of a Project for a Constitution of the Earth where, at art. 48, fundamental goods encompass air, potable water and its sources, rivers, lakes, seas, big forests, big glaciers, life-saving drugs, vaccines, the vital parts of the human body, etc. By contrast, according to art. 52, lethal goods are «unlawful goods» encompassing nuclear weapons, fire-arms, homicidal drones, heavy drugs, radioactive waste, etc.

³² The protection of fundamental rights also requires the enactment of sub-constitutional laws that, for instance: guarantee the presence of public information channels, subject to the control of independent authorities, and guided by the principles of empirical truth, source verification, and effective adversarial proceedings; contrast the spreading of fake news in private channels; ban the private financing of political parties and election campaigns beyond a modest amount (say € 1000 maximum per person/entity) and establish a system of public financing proportional to electoral success; guarantee the presence and effective working of public schools and public universities, open to all on the basis of merit scholarships; guarantee fiscal fairness by means of a progressive tax system.

³³ See, e.g., BOVERO 2022, 82, where "democracy" is defined as the regime whose rules concerning the ascription and exercise of political power establish that «each and every individual who has the political duty to obey to the laws ([...] the generally binding norms which are the output of collective decisions) [...] has the right-power, equal and equivalent to that of anybody else, to participate directly or indirectly to the process of laws (norms) production and creation of the organs of collective decision».

manistic values of the enlightenment, of humanitarian liberalism, and of liberal socialism³⁴.

Enlightenment values sum up in Immanuel Kant's motto «*Sapere aude!* Have the courage to make use of your own intellect!»³⁵, which brings along the idea of «liberating human beings from fear and installing» and preserving «them as [their own] masters»³⁶.

Humanitarian liberalism is the individualist ethical stance, inside of liberalism broadly conceived, that opposes to *anti-humanitarian liberalism*.

The former promotes human freedom in all dimensions of human life and conceives human beings as *homines civiles* who are entitled to realize their own life's projects inside of democratic constitutional states granting fundamental liberties and social rights.

The latter, contrariwise, is primarily concerned with economic freedom and conceives human beings as *homines oeconomici* who are entitled to realize their own life's projects inside of the market and market-subservient political organizations. It is an anti-humanitarian, Darwinian ethics, seeing the paramount value of market freedom to require and justify the limitation of political rights of democratic participation, the abolition of social rights, and the very curtailment of other freedom rights, if contrary to markets' and business's freewheeling³⁷. At such a point that the label "liberalism" may even appear an inappropriate and misleading fraud.

Liberal socialism pursues the goal of human equality as the emancipation of every human being from the slavery of need and brutish life, and conceives it as something that should be realized inside of peaceful, liberal-democratic, political organizations granting social rights³⁸.

One last precision, suggested by the present predicament of humankind. The maximum rule of law should be conceived as a form of government that, to be effective, requires to be realized not only at the level of national states, but also at a supranational, global level³⁹.

I have come to the end of the last stop of my swift journey through five forms of rule of law. This prompts a final remark. If we consider the several varieties from the standpoint of their respective adequacy to the goal of the effective legal protection of the equal social dignity of each and every human person (§ 2 above), only one of them is apparently able to pass the muster. This is the maximum rule of law, simultaneously realized at the national and supranational levels. Accordingly, in the second part of my paper, while casting a swift eye on rule of law's enemies, I will devote to the enemies of maximum rule of law, bringing to the fore their eventual similarities to forms of rule of law different from the maximum one.

II. *Outline of a Theory of Rule of Law's Enemies*

9. *Which Enemies of the Rule of Law?*

The history of legal-political institutions is, for the most part, the history of rule of law's enemies. In a masterly historical-theoretical survey dedicated to the notion of *government of men*, Norberto Bobbio singles out nine varieties: (1) tyranny; (2) paternalistic government; (3) despotic government; (4) democratic peoples' despotism; (5) the government of the wise legislator; (6) the government of the hero founder of the state; (7) commissarial dictatorship; (8) sovereign dictatorship; and, as a combination of the former, (9) the government by a charismatic leader⁴⁰.

³⁴ See, e.g., Kelsen 1920; Kelsen 1955, 1-101; Bobbio 1996; Bobbio 1985; Bovero 2000, ch. 2; Bovero 2022, 69-72, 105-106.

³⁵ Kant 1784, 17.

³⁶ Horkheimer, Adorno 1969, 1.

³⁷ On these two varieties of liberalism, though under different labels, see, e.g., Bobbio 1981, 115-139; Bovero 2022, 77-92.

³⁸ On liberal socialism, see, e.g., the essays in Bovero, Mura, Sbarberi (eds.) (1994).

³⁹ See Ferrajoli 2022; Ferrajoli 2025, Part Two.

⁴⁰ Bobbio 1983a, 179-192.

Tyranny (Caesarism, Bonapartism) is the illegitimate, absolute (legally unlimited), and arbitrary (depending on the ruler's own will and caprice) dominion typically arising out of a *coup d'état* by a political leader and influential demagogue aided by the populace.

Paternalistic government is the absolute and arbitrary rule of a (usually legitimate) sovereign over its subjects, where these are considered and treated as creatures in a perpetual condition of minority, needing, like the forever immature daughters and sons in a family, of the paternal guidance of the state as to the best life for them to live.

Despotic government is the absolute and arbitrary rule of a (usually legitimate) sovereign posing itself as the master who owns its subjects and their properties and can dispose of them at will, as of servants or things⁴¹.

Democratic peoples' despotism is the «new» form of «despotism» that, according to Alexis de Tocqueville, threatens «democratic peoples». In a famous passage of his 1835 *De la démocratie en Amérique*, he depicts it as follows:

«Let's imagine under which new aspects despotism might present itself in the world: I see a vast multitude of like and equal men that just rotate upon themselves, in view of procuring to themselves small and vulgar pleasures by which they satiate their soul [...] Above them stands an immense and tutelar power, which undertakes upon itself the task of ensuring them the enjoyment of their goods and watching over their fate. It is *absolute, meticulous, systematic, far-sighted, and meek*»⁴².

The *government of the wise legislator* and the *government of the hero founder of the state* correspond to the temporary good rule of outstanding personalities, usually leaving to their people well-ordered, far-sighted, and beneficent institutions.

Commissarial dictatorship is the temporary, legitimate, constitutionally-conform, rule of an appointed official vested with extraordinary power in view of efficaciously coping with a situation of emergency that puts at risk the very existence of the state, and aimed at ensuring the state's survival (*salus rei publicae*) along its original institutional design.

Sovereign dictatorship is the illegitimate, absolute, and arbitrary rule of a man or group of men taking over the state in time of social unrest and political emergency⁴³. Party dictatorships and military *de facto* governments provide abundant examples⁴⁴.

Finally, the *government by a charismatic leader* – a category belonging to Max Weber's theory of political power – represents «a sort of historical synthesis of all the forms of government of men»: the great demagogue, the national hero, the great military chief, opposing both traditional and legal-rational forms of power. In Bobbio's words, it is the output of «great historical crisis»; it «burns everything in the short and intense times that lapse in between an end and a beginning,

⁴¹ «Dans le despotisme, un seul, sans loi et sans règle, entraîne tout par sa volonté et par ses caprices» (MONTESQUIEU, 1748, 131).

⁴² BOBBIO 1983a, 181, italics added. The passage belongs to TOCQUEVILLE 1835b, ch.VI of Part IV, 431-438, which *vaut toujours le voyage*. To give an idea, let me quote a few key passages more (from 432 and 435): «Il semble que, si le despotisme venait à s'établir chez les nations démocratiques de nos jours, il l'aurait d'autres caractères: il serait *plus étendue et plus doux*, et il *dégraderait les hommes sans les tourmenter* [...] il ne brise pas les volontés, mais il les amollit, les plie, et les dirige; il force rarement d'agir, mais il s'oppose sans cesse à ce qu'on agisse; il ne détruit point, il empêche de naître; il ne tyrannise point, il gêne, il comprime, il énerve, il éteint, il hébète, et il réduit enfin chaque nation à n'être plus qu'un troupeau d'animaux timides et industrieux, dont le gouvernement est le berger. J'ai toujours cru que cette sorte de servitude, réglée, douce et paisible [...] pourrait se combiner mieux qu'on ne l'imagine *avec quelques-unes de formes extérieures de la liberté*, et qu'il ne lui serait pas impossible de s'établir à l'ombre même de la souveraineté du peuple» (italic added).

⁴³ BOBBIO 1983a, 189-191, referring to Carl Schmitt's theory of dictatorship and adopting its terminology.

⁴⁴ Four properties are usually invoked as characterizing party dictatorship: a single political party, led by a charismatic leader, inspired by a certain ideology, takes over the state and rules by means of terror. Terror is also the notorious mark of military *de facto* governments.

decadence and regeneration, the old order that disappears and the new one that painstakingly makes its way. If his dominion is usually ephemeral, his task is extraordinary»⁴⁵.

Leaving aside the government of the wise legislator, the government of the hero founder of the state, and commissarial dictatorship, if we focus on the remaining varieties of government of men Bobbio considers (tyranny, paternalistic government, despotic government, Tocqueville's democratic despotism, sovereign dictatorship, and the government by a charismatic leader), we cannot avoid an overwhelming question: *Where do these various sorts of government of men differ from maximum rule of law in ways that are at odds with it?*

Apparently, three interconnected counts of difference between maximum rule of law, on the one side, and governments of men, on the other, are worthwhile considering:

1. autocracy;
2. opportunistic legalism;
3. anti-humanitarianism.

1. *Autocracy*. Rulers (the holders of political power, be they hereditary, elected, appointed, or self-appointed) are not under, or subject to, the law (*sub lege*). Rather, they are *above* the law (*super leges*). Ordinarily, they are not law-takers, nor law-appliers, but, rather, law-makers. They are *autocrats* in two different ways. First, they are people who, *alone* inside of a political society, have power *on themselves* (etymological meaning of "autocrat"). Secondly, they exercise an *absolute* and *arbitrary* power *on all others* members of the society (current meaning of "autocrat").
2. *Opportunistic legalism*. Rulers are not bound by the principles of legality of the archetypal model (§ 3 above). Nonetheless, they may find it *convenient* ruling by means of general and abstract norms (*per leges*). Their abiding by principles of legality is, in any case, utterly self-serving.
3. *Anti-humanitarianism*. From a substantive point of view, rulers reject individualist and humanitarian values: they deny the equal social dignity of every human person and oppose humanistic fundamental – freedom, social, political, and civil – rights.

Upon these differences, the governments that represent institutional alternatives to the maximum rule of law can be regarded as *autocratic* or *authoritarian* governments, in a wide sense of these terms. A theory of the forms of legal-political organization faring as maximum rule of law's enemies, therefore, can be conceived as *a theory of autocracy* or *political authoritarianism*.

By way of a very tentative theoretical (re)construction, it seems useful singling out four varieties of autocracy or authoritarian government (in a wide sense):

1. full legalistic autocracy;
2. *prima facie* legalistic autocracy;
3. discretionary legalistic autocracy;
4. full decisionist autocracy.

It goes without saying that the four forms of autocratic government are to be considered as ideal-types: tools for conceptually capturing, understanding, and explaining the reality of legal-political institutions and legal-political thinking⁴⁶.

⁴⁵ BOBBIO 1983a, 191-192.

⁴⁶ SCHEPPELE 2018, 545-583, at 548, defines the «phenomenon» he proposes to call "autocratic legalism" as obtaining when «electoral mandates plus constitutional and legal change are used», by a charismatic leader and its parliamentary majority, «in the service of an illiberal agenda».

10. Full Legalistic Autocracy

A legal-political organization is a *full legalistic autocracy*, if, and only if, *autocratic* and *anti-humanitarian* rulers adopt the principles of legality as imposing *all-things-considered* duties, and, accordingly, they exercise their powers by means of general, public, not *ex post facto*, clear, consistent, compliable, stable, and congruously applied norms.

A full legalistic autocracy can be regarded as a mixed form of government. It exhibits, at the same time, features both of the government of men and of the government of law(s).

On the one side, it is a government of men, where rulers are above the law and have free reins as to the content of the laws they enact.

On the other side, it is a government of law(s) restrictively understood as a government by laws (*per leges*). Realizing, from *this* perspective, a *minimum rule of law* (§ 5 above).

Due to its full commitment to legality, a full legalistic autocracy can be regarded as dwelling, in an ideal scale, on the lowest degree of autocracyness: as representing, from *that* standpoint, a form of *minimum autocracy*.

11. Prima Facie Legalistic Autocracy

A legal-political organization is a *prima facie legalistic autocracy*, if, and only if, *autocratic* and *anti-humanitarian* rulers adopt the principles of legality as imposing only *prima facie* duties: *i.e.*, duties that are overridable in case of convenience.

Like full legalistic autocracy, a *prima facie* legalistic autocracy features as a mixed form of government that combines aspects both of the government of men and of the government of law(s). In particular, in its government of law(s) side, it realizes a *quasi-minimum rule of law* (§ 4 above).

Unlike full legalistic autocracy, however, its commitment to legality is weaker, and its autocracyness stronger. It represents therefore, from *that* standpoint, a form of *more-than-minimum autocracy*.

12. Discretionary Legalistic Autocracy

A legal-political organization is a *discretionary legalistic autocracy*, if, and only if, *autocratic* and *anti-humanitarian* rulers adopt a *thoroughly opportunistic attitude* as to the principles of legality.

Legal authorities never have the duty, not even a *prima facie* one, of exercising their powers *per leges*. Resorting to general, public, not *ex post facto*, clear, consistent, compliable, stable, and congruously applied norms is *always* the output of discretionary decisions.

From the perspective we are now considering, a discretionary legalistic autocracy does not correspond to any form of rule of law whatsoever: not even to a *quasi-minimum rule of law* (§ 4 above). It may come close to it, though, insofar as, in the pursuit of their plans, rulers choose to enact norms that satisfy the principles of legality in a statistically significant number of cases.

If compared with full and *prima facie* legalistic autocracy, discretionary legalistic autocracy exhibits a much stronger degree of autocracyness. It fares, therefore, from *that* standpoint, as a form of *quasi-maximum autocracy*⁴⁷.

⁴⁷ Discretionary legalistic autocracy captures, so to speak, the dark side of Fraenkel's "dual state". See FRAENKEL 1983.

13. Full Decisionist Autocracy

Finally, a legal-political organization is a *full decisionist autocracy*, if, and only if, *autocratic* and *anti-humanitarian* rulers adopt an *attitude of complete and systematic rejection* of the principles of legality.

Legal authorities have the duty never to exercise their powers *per leges*. Resorting to general, public, not *ex post facto*, clear, consistent, compliable, stable, and congruously applied norms is prohibited.

Unlike full, *prima facie*, and discretionary legalistic autocracy, a full decisionist autocracy is no *mixed government*: not even in the very weak and wholly opportunist form that characterizes discretionary legalistic autocracy.

Full decisionist autocracy represents, therefore, the *absolute* or *pure form* of government of men. It can be regarded, accordingly, from *this* point of view, as a *maximum autocracy*, corresponding to the highest degree of autocracyness.

14. Real Autocracies

The four forms of autocracy are, as I said, ideal types. It is apparent that they possess an uneven explanatory capacity in relation to the reality of legal-political institutions.

Full decisionist autocracy represents, as we have seen (§ 13 above), the pure, absolute, extreme variety of government of men. The notion is useful insofar as our aim is setting forth an exhaustive theoretical map avoiding conceptual vacuums. However, such a form of government looks unrealizable in coping with present human societies. Accordingly, at least in the here and now of extant government techniques, it points to an empty class⁴⁸.

By contrast, *prima facie* and discretionary legalistic autocracies are ideal types possessing an evident explanatory virtue.

Plenty of real instances close to *prima facie* legalistic autocracy can be provided. Think at those autocratic regimes that superseded constitutional regimes, without completely abolishing the pre-existing rule of legality principles over certain matters. Think, for example, at the Fascist regimes in Italy, Spain and Portugal, and at most of the military *de facto* governments in Africa, Asia, and Latin America.

Plenty of real instances close to discretionary legalistic autocracy can be offered too. Think, for example, at revolutionary party dictatorships like Soviet Russia, Communist China, and North Korea.

What about full legalistic autocracy? Has it any actual explanatory capacity, or is it just another conceptual signpost, pointing to an empty class, like full decisionist autocracy?

At a first blush, full legalistic autocracy seems an unlikely form for actual governments. Why should an autocratic regime bother about fully respecting the principles of legality?

Upon consideration, however, full legalism may not be a weird institutional choice at all. At least, whenever an autocratic regime purports to *conceal* its autocratic nature and *present itself* as a “true” and “full” government of law(s), a “true” and “full” democracy, a “true” and “full” rule of law. Accordingly, full legalistic autocracy is likely to be instantiated, closely if not perfectly, by fake, pretended, forms of democracy and rule of law.

In the history of political thought, one such form goes under the name of “tyranny of the majority” (“majority despotism”, “majority dictatorship”)⁴⁹. In recent times, however, the support-

⁴⁸ Realizing a full decisionist autocracy requires the possibility of exercising a capillary control over the behaviours of each single individual, combined with the possibility of issuing individual orders at any time, and sanctioning individual violations on the spot. A far scarier situation than in Orwellian 1984, which, unfortunately, the present pace in the progress of surveillance capitalism and society is making ever less unrealizable. See, e.g., ZUBOFF 2019; BRIA 2025, I, 11.

⁴⁹ Alexis de Tocqueville uses the term “tyrannie de la majorité” (tyranny of the majority) to refer to a situation

ers of this form of government have introduced the label “majoritarian democracy”, which, they claim, would stand for the “true” and “full” form of democracy: the one finally “restoring the scepter to the people-prince”, in opposition to obsolete, windbag, inconclusive, and paradoxically anti-popular “consensual” or “consociate” democracy.

In a series of essays from the year 2015 to date, Michelangelo Bovero argues the label “majoritarian democracy” to be misleading and proposes to use instead, as theoretically more adequate substitutes, a few neologisms of his own invention. These are *pleonocracy* (literally: the power or government of the most) and *majoritarian elective autocracy*, both referring to a specific variety of *elective autocracy*⁵⁰.

Elective autocracy features, at present, as one of the most insidious enemies of maximum rule of law. This makes it worthwhile paying a visit to Bovero’s theory.

15. *Elective Autocracies*

Bovero distinguishes two varieties of elective autocracy: *monocratic elective autocracy* and *majoritarian elective autocracy* or, as we have seen, *pleonocracy*⁵¹.

Monocratic elective autocracy is a legal-political organization where the electoral body, which corresponds to the whole set of citizens of age, periodically elects an autocrat, to whom it grants full power until the next elections (if there will be any). Bovero identifies this type of government by means of what he calls a «thought experiment»:

«Let us try to think at the two possible functions of political elections by universal suffrage that I have pointed out – electing parliament, electing the head of the government – as a sharp alternative, an *aut-aut*: either one is selected, or the other is selected, but not both. We will have constructed the purely hypothetical image of two irreducible types of regime: in the first one, a collegial body, representing all the political orientations that are present in a society, elaborates collective decisions, and the decision that arises from parliamentary dialectic will be law; in the second one, a monocratic body, designated by a part (not always, in fact, a majority) of the electorate, determines collective decisions, and the law will be *quod principi placuit*»⁵².

According to Bovero, *monocratic elective autocracy* represents the form of state legal order towards which «contemporary real democracies» are tending, driven as they are by powerful neoliberal, plutocratic, populist, plebiscitary, and personalist pressures⁵³.

In the meantime, however, before the rules of monocratic elective autocracy become positive constitutional law, a constitutional democracy is likely to transform itself into a *pleonocracy* or

where the legislature is «the slave» of the «passions» of the political «majority» it represents, and its power is countered neither by a separated executive power («qui ait une force qui lui soit propre»), nor by a judiciary power independent from both (TOCQUEVILLE 1835a, 375-379). The tyranny of the majority is not to be confused with the democratic peoples’ despotism Tocqueville depicts in the second volume of his work (see § 9 above). There, as it appears from a passage I quote in footnote 43, Tocqueville seems to be pointing to a form of bureaucratic, organizationally centralized, despotism which establishes itself and thrives *behind* the façade of a democratic, popular sovereignty, regime. Something like the Big Tech dictatorship I will consider in the last paragraph (§ 16 below).

⁵⁰ «A regime that boasts to be a precious variety of the genus democracy: the so-called majoritarian democracy. And that I believe should be recognized instead as a form of *elective autocracy*, disguised in democratic clothes. Using my classical-style neologism: a *pleonocracy*» (BOVERO 2017, 389-403, at 402). See also BOVERO 2015, 1-18; BOVERO 2018, 11-45; BOVERO 2022, especially chs. IV to VIII; BOVERO 2023, 21-35; BOVERO 2024, 135-138.

⁵¹ We may also think, of course, at forms of elective oligarchic autocracy.

⁵² BOVERO 2015, 10.

⁵³ BOVERO 2015, 11; BOVERO 2000, ch. 8 e 9; BOVERO 2022, 134-135.

majoritarian elective autocracy: typically, through the enactment of apposite electoral laws and the establishment of appropriate constitutional practices and customs.

A pleonocracy would represent, in sum, the form of government that establishes itself in the transition process from constitutional democracy (maximum rule of law) to monocratic elective autocracy⁵⁴.

Taking stock of Bovero's analysis, the principles that characterize the material constitution and ideology of a pleonocratic form of government can be recounted, very roughly, as follows.

1. All political power ought to be vested into a parliamentary majority and its (charismatic) leader; furthermore, such an attribution should be regarded as being, in principle, indisputable and irreversible until the next general elections come.
2. The function of general elections should be meant to consist, not in electing a parliament that be representative of the whole society, but, rather, in electing a ruling, virtually plenipotentiary, majority led by a (charismatic) leader featuring as the head of the executive.
3. The elected majority and its leader should be regarded as the exclusive depositories of popular legitimacy and the exclusive or privileged interpreters of the will and sentiments of the people.
4. The elected majority should provide unconditional support to its (charismatic) leader, turning parliament into a handy tool for the executive's policies.
5. The popularly legitimized executive should be understood as a "mandate executive". A vote of no confidence against it, if admitted by the formal constitution, must lead to the dissolution of the chambers and the calling of new elections. Because of their tight, organicist, political connection, the parliament and the executive *simul stabunt, simul cadent*.
6. The most suitable electoral system to ensure elections whose outcome is the designation of a mandate executive consists in the uninominal majoritarian system, or, in any case, in a system characterized by "majority bonuses" capable of transforming («transubstantiating») electoral minorities into invulnerable political majorities. Contrariwise, the proportional electoral system must be abolished as the remain of a romantic and inconclusive political past.
7. The entire constitutional and political life of the nation should abide by two fundamental principles: "Winner takes all" (Spoil System) and "Governability – and the stability of the executive – is the supreme good".
8. Parliamentary minorities should be put in a condition of virtually complete irrelevance during the whole mandate. Their rights should be conceived in very narrow terms. Ordinary acts of opposition and critique to the ruling majority, its executive, and its charismatic leader should be energetically stigmatized as unlawful "plots" and "maneuvers" attempting at "illegitimately" "overthrowing" the legitimate government. Minorities should be regarded as being entitled just to a weak right eventually to win in the next elections. The extant political majority should be regarded as having the right to change the electoral law and manipulate the electoral process in such a way to prevent minorities from winning the elections, or, if that is not possible, severely limiting the effects of their electoral victory.

⁵⁴ We may also think, of course, at the form of oligarchic elective autocracy. I will consider this possibility at § 16 below.

9. Organs of control and guarantee (like constitutional courts, courts of accounts, an independent judiciary, independent prosecution offices, an independent central bank, an independent statistical office, an independent public information and broadcasting system, etc.) should be progressively dismantled or anyway disempowered, in view of guaranteeing to the ruling majority and its (charismatic) leader the possibility of implementing their agenda so far as possible without facing annoying trammels “the people would not understand”.
10. Fundamental liberty rights should be exercised in ways not offensive to the ruling political majority, its (charismatic) leader, and, above all, the wishes, feelings, and sensibilities of the People they exclusively interpret and represent⁵⁵.

The principles above shed light on why pleonocracy poses as an insidious threat to maximum rule of law. On two counts.

First. The ruling majority and its (charismatic) leader conceive of themselves as being *above* the law. In force of the full democratic legitimacy they boast to enjoy, they regard the constitution, though formally rigid, as *virtually flexible*: as being liable, in particular, to implicit revisions by ordinary laws that piecemeal-wise modify and restrict the meaning of constitutional clauses⁵⁶.

Second. Pleonocracies characterize for the adoption of an anti-humanitarian ethics.

On the one hand, due to the full democratic legitimacy they claim to enjoy, political majorities consider themselves as *higher in social dignity* than political minorities. These are downgraded to the status of “enemies” of the people and/or “fools” standing on the “wrong side of History”.

On the other hand, political majorities also take an opportunist stance towards freedom rights. They see freedom, properly, as the right to think and behave as the majority likes. They do not endorse freedom rights as morally and legally worthwhile *per se*. Rather, they just *tolerate* freedom rights. And usually make their best to put checks on them in the name of jealous twin deities like “Law and Order”, “Law and Security”, “Security and governability”, etc.

16. *Big Tech Dictatorship*

I will conclude this tentative survey on the enemies of maximum rule of law by casting a swift glance on a phenomenon that, if considered from its present stage of development and likely future orientation, looks as aiming, at best, at establishing a *universal oligarchic autocracy* graciously vesting, in some political societies, democratic robes concealing elective majoritarian, oligarchic, or monocratic autocracies⁵⁷.

External observers refer to the phenomenon as “technofeudalism”, “technocapitalism”, “technofascism”, “technomonarchism”, or “technopopulism”⁵⁸, to emphasize that the new forms

⁵⁵ BOVERO 2015, 7-II; BOVERO 2017, 389-403; BOVERO 2018, 27-43; BOVERO 2022, 131-132.

⁵⁶ On tacit constitutional changes, see GIANFORMAGGIO 1995, 265-270.

⁵⁷ A hint of this can perhaps be gathered from a passage of the authors I am going to consider in this paragraph: Peter Thiel. In *Your Suffrage Isn't in Danger. Your Other Rights Are* (THIEL 2009b), he writes: «It would be absurd to suggest that women's votes will be taken away or that this would solve the political problems that vex us. While *I don't think any class of people should be disenfranchised, I have little hope that voting will make things better. Voting is not under siege in America, but many other rights are. In America, people are imprisoned for using even very mild drugs, tortured by our own government, and forced to bail out reckless financial companies*», italics added.

⁵⁸ See, e.g., VAROUFAKIS 2024; DE BIASE 2025; DI CESARE 2025; MULIERI 2025. On the phenomenon, see also, e.g., BENANTI 2025; BRIA 2025; DA EMPOLI 2025; SCHAAKE 2024; SLOBODIAN 2023; SLOBODIAN 2025; VENANZONI 2025. On the authoritarian trend in politics, see, e.g., APPLEBAUM 2024; MULIERI 2024. “Neo-feudalism” is also used to refer to the properties characterizing the relations between providing big business firms, on the one hand, provided consumers, customers, on the other, whatever the market (from house renting to buying a washing machine).

of autocratic government share a strict nexus of dependence on the services provided by big and extremely powerful private technological firms operating on a planetary scale (Big Tech)⁵⁹.

Contrariwise, prominent Big Tech notables and officials present themselves as supporters of a “technological Republic”⁶⁰.

I propose to call the form of government Big Tech partisans stand for, the rule of big technological corporations over national governments and societies, *Big Tech dictatorship*.

On a tentative survey, Big Tech dictatorship characterizes for seven main properties. It is a (1) *globalist*, (2) *private law-gear*, (3) *technolatric*, (4) *superman libertarian*, (5) *anti-political*, (6) *wildly capitalist*, and (7) *government-parasitic* form of totalitarian political dominion.

1. *Globalism*. Big Tech dictatorship aims, first of all, at exercising its influence not just at the level of a single society or national state, but, possibly, at the global level: in *any part* of the Earth and even *beyond* the Earth. These further areas should encompass the «new spaces» that technology has made and will make available for human life. Like, for instance, the cyberspace, the outer world (Mars and other colonizable planets), and the seabed⁶¹.

2. *Private law-gear* dominion. Big Tech dictatorship poses, secondly, as a form of *private law gear* dominion over governments and human societies. This occurs in three ways.

First, the very idea of a global sphere of public law, characterized by global legal institutions, functions, and rules resulting from international treaties and customary law is incompatible with Big Tech’s worldview. They stand in fact for international and supranational relations that tend to be *devoid* of international or supranational public law and the forms of legal organizations that foster it (like, e.g., United Nations, UNESCO, FAO, the WHO, etc.)⁶².

Second, the tools Big Tech use to build and exercise their global dominion come from a universal and as far as possible unlimited private law, which should develop and thrive in a context of overall deregulation. These are the usual tools of market economy: (almost) absolute private property rights and (almost) absolute contractual freedom, within the framework of a pro-business soft law produced and administered by Big Tech themselves or their agents⁶³.

Third, Big Tech resort to the sanctity of absolute private property rights and contractual freedom to ensnare governments and individuals into unequal contractual bonds, opposing undefeasible “natural” limits to the legitimate and necessary public takings of (at least) some of the essential services they offer.

3. *Technolatory*. Big Tech dictatorship is, thirdly, a form of dominion characterized by the *adoption of a technolatric ethics*. By means of dignitaries and officials, Big Tech emphasize that information

⁵⁹ As we all know, Big Tech provide software and artificial intelligence services that capillary affect: (1) the working of governments at international, national, and local level, from national defence, intelligence and counterinsurgency to the organization of county health services and space explorations; (2) the ways ordinary people live their daily lives; (3) the ways for governments and organized private interests to control, manipulate, and steer ordinary people’s lives in all their dimensions (cultural, economic, moral, political, religious, social, etc.).

⁶⁰ See KARP, ZAMISKA 2025. The account in the text will be focussed on Karp’s, Thiel’s, and Zamiska’s positions.

⁶¹ See THIEL 2009a, 3.

⁶² Taking the lead from Leo Strauss’s claim that «the most just society cannot survive without “intelligence”, i.e., espionage» and that «espionage is impossible without a suspension of certain natural rights», P. Thiel comments that if we want peace and other goods of life: «Instead of the United Nations, *filed with interminable and inconclusive parliamentary debates that resemble Shakesperean tales told by idiots*, we should consider Echelon, the secret coordination of the world’s intelligence services, as the decisive path to a truly global *pax Americana*» (THIEL 2007, 189-218, at 208, italics added). In passing, Echelon was not «the secret coordination of the world’s intelligence services», unless by “world’s intelligence services” we mean the secret services of the USA and UK, with the participation of those of Canada, Australia and New Zealand.

⁶³ On soft law, see NUÑEZ VAQUERO 2025.

technologies have made the digital society possible. They boast of possessing the keys – which, it should be noted, are strictly *engineering* in nature – that have changed, and will continue to change, «the course of human history»⁶⁴. They assume, therefore, to have the moral and civic duty to bring their technological know-how to bear on the shaping of the national policies of the United States and allied Countries⁶⁵.

4. *Superman libertarianism, 5. rejection of politics, 6. wild capitalism.* Big Tech dictatorship characterizes, furthermore, for the triplet properties of superman libertarianism, rejection of traditional politics, and a radical commitment to wild capitalism.

Superman (*Übermenschlich*) libertarianism claims ambitious, high-IQ, and proactive individuals to be (they alone) morally entitled to be free and sovereign over themselves. Politics, however, usually engages in a mortal contest («a deadly race») with individual «liberty»⁶⁶ and «technology»⁶⁷. Accordingly, leaving aside the alternative of escaping from the present world as a world ruled by politics⁶⁸, superman libertarians should promote and procure the extinction of politics, at least as it has been conceived from Protagoras's age until now. In particular, it should be clear to them that only the superseding both of «social democracy» and of «totalitarian or fundamentalist states»⁶⁹ can promote the building and propagation of «the machinery of freedom that makes the world safe for capitalism»⁷⁰. Capitalism – meaning by that untrammelled capitalists' ventures – represents in turn the natural setting for the flourishing of individuals' «authentic freedom» and full sovereignty over themselves, as well as for technological development and technological rule.

7. *Government-parasitism.* Big Tech dictatorship is, finally, a form of dominion that characterizes for *government-parasitism*. At least at present, Big Tech do not aim at replacing national governments. They aim, rather, at changing, «rebuilding», «reconstructing» them into «technological republics», the core of which should consist in a *technological-military complex*, the digital age heir of the military-industrial complex of older days⁷¹. Big Tech aim, accordingly, at ruling over human societies, all over the reachable world, by means of subservient governments. To this goal, they regard constitutional democracy as utterly unfit⁷². The technological republic is likely

⁶⁴ See KARP 2025.

⁶⁵ «The engineering elite of Silicon Valley has an affirmative obligation to participate in the defense of the nation and the articulation of a national project – what is this country, what are our values, and for what we stand – and, by extension, to preserve the enduring yet fragile geopolitical advantage that the United States and its allies in Europe and elsewhere have retained over their adversaries» (KARP, ZAMISKA 2025, xiv; see also 10-11, where technological values are enlisted).

⁶⁶ THIEL 2009b: «I believe that politics is way too intense. That's why I'm a libertarian. Politics gets people angry, destroys relationships, and polarizes peoples' vision: the world is us versus them; good people versus the other. Politics is about interfering with other people's lives without their consent. That's probably why, in the past, libertarians have made little progress in the political sphere»; THIEL 2009a, 3: «I no longer believe that freedom and democracy are compatible».

⁶⁷ THIEL 2009a, 3.

⁶⁸ This possibility Peter Thiel considers in THIEL 2009a, 2-4.

⁶⁹ THIEL 2009a, 3.

⁷⁰ THIEL 2009a, 4.

⁷¹ KARP, ZAMISKA 2025, 3-15.

⁷² In a passage of a paper, P. Thiel, after assuming the crisis of, notice, nothing less than “the modern West” («Let us recapitulate. The modern West has lost faith in itself»), poses an overwhelming question: «Is there a way to fortify the modern West without destroying it altogether, a way of not throwing the baby out with the bathwater?». It is not clear which answer Thiel offers. It is clear, however, that in his view no answer can come from constitutional democracy: «a direct path forward – writes Thiel – is prevented by America's constitutional machinery. By “setting ambition against ambition” with an elaborate system of checks and balances, it prevents any single ambitious person from reconstructing the old Republic. America's founders enjoyed a freedom of action far surpassing that of America's

to be, rather, something close to some form of elective autocracy, to which Big Tech would provide lavishly retributed advice, services, and personnel⁷³. It may also happen that some Big Tech fat cats serve as ministers or high rank bureaucrats in elective autocratic governments. In such a case, Big Tech directly take part in the realization of their universal autocratic conspiracy.

subsequent politicians. Eventually, ambitious people would come to learn that there is little one can do in politics and that all merely political career ends in failure. The intellectual paralysis of self-knowledge has its counterpoint in *the political paralysis embedded in our open system of government*» (THIEL 2007, 207, italics added).

⁷³ In his August 4, 2025, *Letter to Shareholders*, after boasting the extraordinary business success of Palantir, the technological firm he co-founded with Peter Thiel, as the output of an «unapologetically specific culture [...] that gave rise to» software programs «all of which have already changed the course of human history», Alexander Karp (KARP 2025) refers to the United States as «the most consequential country in the West», whose «culture» «enables companies like ours to come into existence and excel», and claims that such culture «must be protected. The United States is not, and should not be permitted to become, *a soft compromise and amalgam of global values and tastes* [...] a tolerance of everything, a shallow embrace of all views and perspectives as equally valid, often and unfortunately devolves into a belief in nothing» (italics added). This statement is apparently at odds with the «role» that, according to Karp and Zamiska, «Silicon Valley can and should play in the advancement and reinvention of a national project, both in the United States and abroad – of what, beyond a firm and uncontroversial commitment to liberalism and its values, including the advancement of individual rights and fairness, constitutes our shared vision of the community to which we belong» (KARP, ZAMISKA 2025, xv; see also II: «the legitimacy of the American government and democratic regimes around the world will require an increase in economic and technical output that can be achieved only through the more efficient adoption of technology and software. The public will forgive many failures and sins of the political class. But the electorate will not overlook a systemic inability to harness technology for the purpose of effectively delivering the goods and services that are essential to our lives»). Which “liberalism”? Which “individual rights”? Which “fairness”? The Authors leave it in the dark. And make vague communitarian-sounding claims, appeals to the need for «broader forms» of «collective identity», and reference to the «nation-state» as «the most effective means of collective organization» (KARP, ZAMISKA 2025 e.g., 14, 189, 198, 200-201, 201-204, 214) or to «our current nihilism as a culture» (214). Tacitly acknowledging the ethical desertification and the destruction of social solidarity brought about by the successful neoliberal, wild capitalism, revolution from the late 1970s onward, they end by arguing that «the path forward will involve *a reconciliation* of a commitment to the free market, and its atomization and isolation of individual wants and needs, with the insatiable human desire for some form of collective experience and endeavor [...] The reconstruction of a technological republic [...] will require a re-embrace of collective experience, of shared purpose and identity, of civic rituals that are capable of binding us together [...] It might have been just and necessary to dismantle the old order. We should now build something together in its place» (KARP, ZAMISKA 2025, 217-218). On Big Tech’s state-capture strategy, see, e.g., BRIA 2025.

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